

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1833 CS PCB CJ 05-01 Adoption  
**SPONSOR(S):** Civil Justice Committee and Mahon  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	5 Y, 0 N	Billmeier	Billmeier
1) Justice Council	9 Y, 0 N, w/CS	Billmeier	De La Paz
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 1833 amends s. 63.182, F.S., to clarify who is entitled to notice of a pending adoption proceeding. Current law provides that notice be given to specified persons, such as persons whose consent is required before the adoption can proceed. This bill adds language to explain that the interest that entitles a person to notice must be direct, financial, and immediate. A showing of an indirect, inconsequential, or contingent interest is inadequate. The bill will apply to all adoptions, including those in which a judgment of adoption has been entered.

This bill does not appear to have a fiscal impact on state or local governments.

This bill will take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Notice of an Adoption Proceeding

Section 63.122, F.S., provides for notice of hearing on adoptions. Section 63.122(2), F.S., provides that the notice of the hearing must be given as prescribed by the Florida Rules of Civil Procedure and that service of process must be made as specified by law for civil actions. Florida Rule of Civil Procedure 1.210 permits any person who has an interest adverse to the plaintiff to be joined as a party to an action. Case law has interpreted this provision to require joinder of indispensable parties.<sup>1</sup> Florida statutes require notice of adoption proceedings to specific persons in certain situations. For example:

- Section 63.087(5), F.S., requires service of a petition to terminate parental rights pending adoption of any person who is required to consent to an adoption. Consent is required from the mother of the minor, the father of the minor in specified situations, the minor, if 12 years of age or older, or any person lawfully entitled to custody of the minor if required by a court.<sup>2</sup>

- Section 63.0425, F.S., requires notice to a grandparent if the child has lived with that grandparent for at least 6 months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption;

Section 63.122(1), F.S., requires that a hearing on a petition to adopt a minor may not be held sooner than 30 days after the date the order terminating parental rights was entered or sooner than 90 days after the date the minor is placed in physical custody of the petitioner, unless good cause is shown to shorten the time periods. Section 63.089, F.S., requires that the hearing to terminate parental rights pending adoption may not be held until at least 20 days have elapsed since the service of someone whose consent is required for the adoption to take place.

##### Intervention in an Adoption Proceeding

Case law permits certain persons to intervene in adoption proceedings. Florida Rule of Civil Procedure 1.230 governs intervention in civil actions. The rule provides that anyone with an interest in pending litigation may be permitted to intervene in the action. The Florida Supreme Court has explained when intervention should be permitted in adoption cases:

Generally, the interest which entitles a person to intervene must be shown to be in the matter in litigation. The interest must be direct and immediate and the intervenor must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of indirect, inconsequential or contingent interest is wholly inadequate.<sup>3</sup>

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<sup>1</sup> See Martinez v. Balbin, 76 So. 2d 488, 490 (Fla. 1954) (“If, however, the omitted parties are truly indispensable, the defect goes to the substance of the appellant’s case, for the action cannot proceed without them.”).

<sup>2</sup> Section 63.062, F.S.

<sup>3</sup> Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996).

Whether intervention is allowed is determined on a case by case basis.<sup>4</sup>

### HB 1833

HB 1833 amends s. 63.182, F.S., to provide that the interest that entitles a person to notice must be direct, financial, and immediate. The person must show that he or she will gain or lose by the direct legal operation and effect of judgment. The bill provides that a showing of an indirect, inconsequential, or contingent interest is wholly inadequate. The effect of this bill would be to state that notice of a pending adoption need not be given to person who would not be entitled to intervene. This bill would prevent someone who was not entitled to intervene from later setting aside an adoption for failure to get notice.

The bill provides that its terms are remedial and shall apply to all adoptions, including those which a judgment of adoption has been entered.

The bill takes effect upon becoming a law.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 63.182, F.S., to state that the interest that entitles a person to notice of an adoption proceeding must be direct, financial, and immediate. It provides that the bill will apply to all adoptions, including those where a judgment of adoption has been entered.

Section 2. Provides that the bill becomes effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on state government.

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on state government.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on local government.

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on local government.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

#### D. FISCAL COMMENTS:

None.

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<sup>4</sup> See Stefanos, 673 So. 2d at 13-14 (holding that a person who has had parental rights terminated may not intervene in an ongoing adoption proceeding); In re Adoption of a Minor Child, 593 So. 2d 185 (Fla. 1991)(allowing grandparents to intervene); Rickard v. McKesson, 774 So. 2d 838 (Fla. 4<sup>th</sup> DCA 2000)(allowing potential trust beneficiary to intervene).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Justice Council considered the bill on April 14, 2005. The council adopted an amendment to require the interest that entitles one to notice to be direct, financial, and immediate. The amendment also added language to clarify that the bill applies to all adoptions, including those where a judgment of adoption has already been entered. The bill, as amended, was reported favorably as a council substitute.